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March 12, 2020

Via ECF

The Honorable Kimba M. Wood
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Elisa W. v. *The City of New York, et al.*
15 CV 5273 (KMW) (SLC)

Dear Judge Wood:

We write pursuant to Section III.A of Your Honor's Individual Rules on behalf of the Brooklyn Defender Services, The Bronx Defenders, Center for Family Representation Inc., and Neighborhood Defender Service of Harlem (the "proposed Parent Advocate *Amici*") to seek leave to file the attached *amicus curiae* brief in opposition to Plaintiffs' renewed motion for class certification. (Ex. A)

The proposed Parent Advocate *Amici* are four public interest organizations that, collectively, provide legal representation to, and protect the rights of, the vast

majority of parents with children in foster care in New York City. This means that in Family Court cases across New York City where children have been removed from, and/or reunified with their families, proposed *Amici* represent the parents directly in those proceedings. (Ex. A at 1.) The Parent Advocates also regularly advocate for New York's families through various efforts to improve the foster system. (*Id.*) We respectfully submit, therefore, that proposed *Amici* have a unique perspective and valuable information to share here. Indeed, the Court previously allowed the Parent Advocates to intervene in this matter for the purpose of objecting to the proposed Consent Decree, and found that they offered a helpful perspective of stakeholders regarding the outcome of this case. *See* Order denying Consent Decree, ECF No. 259 at 16 ("The Court concludes that the objections to the Consent Decree by the Children's Advocates and the Parent Advocates are significant for purposes of this factor of the *Grinnell* analysis, as these organizations are well suited to advocate on behalf of many of those whose interests would be affected by the Consent Decree.").

District Courts have broad discretion to permit *amici curiae* in their cases. *United States* v. *Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992). "An amicus brief should normally be allowed when … the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Automobile Club N.Y. Inc.* v. *Port Authority of N.Y. & N.J.*, No. 11-cv-6746-RJH, 2011 U.S. Dist. LEXIS 135391 *2 (S.D.N.Y. Nov. 22, 2011) (internal quotation marks omitted).

Based upon their extensive experience with the New York City foster system, the proposed Parent Advocate *Amici* submit this amicus brief to address what the Parent Advocates believe is an incomplete presentation of the foster system depicted in Plaintiffs' class certification motion. In this case, Plaintiffs seek to certify a class of children who are now or will be in foster care in New York. In particular, however, Plaintiffs propose certification of two subclasses consisting of (i) "all children who have been in ACS custody for more than two years and whose cases require special scrutiny pursuant to ACS policy," and (ii) "all children for whom Contract Agencies failed to assess and document compelling reasons every three months to justify the decision not to file a termination of parental rights petition after the children had been in care for 15 of the prior 22 months." Plaintiffs' proposed subclasses, as well as the substantive focus of their proposed class claims, expose a troubling focus on speed to adoption and termination of parental rights. This view is fundamentally in opposition to considered New York policy, which favors reunification of families even after lengthy separations, and appreciates that termination of parental rights should only occur in rare cases, as a last resort.

Indeed, consistent with social science research, New York adheres to a deliberate policy choice in favor of the reunification of children with their family of origin whenever reunification is achievable. In the Parent Advocates' experience, reunification can sometimes take years to achieve, as parents work to overcome obstacles presented by, for example, lack of affordable housing and other issues arising from poverty; mental health challenges; and the consequences of domestic violence. While

progress to speed the time to reunifications can be frustratingly slow, reunification of children with parents (or, sometimes, guardianship by relatives through kinship foster placement) nonetheless can and should remain the goal for most children.

The Parent Advocates are concerned that Plaintiffs' class certification motion ignores this important and well-considered policy choice to prioritize reunifying families. Instead, Plaintiffs conflate adoption with permanency, and focus repeatedly on duration of time in the foster system, the length of time before termination of parental rights (TPR) proceedings are commenced, and the purported need for paperwork to justify why TPR is not sought. Indeed, Plaintiffs' class certification motion refers to adoption *four times* as often as reunification, and mentions guardianship in passing only once, and the proposed subclasses seem geared to encourage policies favoring speedier TPRs and adoption. This focus, in proposed *Amici's* view, threatens to undermine the substantial progress that New York has made (without any attendant increase in risk to children) in decreasing removals through preventative services, and prioritizing the reunification of families when removal does occur. The Parent Advocates are gravely concerned that the diversion of resources to ***Plaintiffs'*** preferred policy goals of speedier TPR and adoptions, rather than reunification of families, will undermine New York's considered policy goals, to the peril of New York's families and particularly the families of color that are disproportionately affected.

For these reasons, the Parent Advocates seek leave to file the enclosed amicus brief and supporting materials, to present the Court with additional context relevant to the pending motion, and to explain why Plaintiffs' apparent policy objectives (including as articulated through the proposed subclasses) are not in the best interests of New York's families.

We have consulted with the parties, and counsel for the City Defendant has informed us that the City Defendant consents to our filing. Counsel for the State Defendant takes no position on this request. Plaintiffs advised that they will communicate their position on the Parent Advocates' request for leave in a separate communication to the Court.

The Parent Advocates appreciate the Court's consideration of this request.

Respectfully submitted,

/s/ Audra J. Soloway

Audra J. Soloway

Copies to all counsel of record by ECF